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PROJECT NO. 55812

**TEXAS ENERGY FUND
COMPLETION BONUS GRANT
PROGRAM**

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

PROPOSAL FOR PUBLICATION OF NEW 16 TAC §25.511

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.511, relating to the Texas Energy Fund Completion Bonus Grant program. This new rule will implement Public Utility Regulatory Act (PURA) §34.0105 as enacted by Senate Bill (SB) 2627 during the Texas 88th Regular Legislative Session. The proposed rule will establish procedures for applying for a completion bonus grant award as well as terms for an applicant to request an annual grant payment. The proposed rule also specifies performance standards that an electric generating facility must achieve to obtain a completion bonus grant payment.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase in legislative appropriations because Texas Constitution article III, §49-q provides that “money in the Texas energy fund may

be administered and used, without further appropriation . . .”;

(4) implementation of the proposed will not require a decrease in future legislative appropriations to the agency;

(5) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

(6) the proposed rule will create a new regulation;

(7) the proposed rule will not expand, limit, or repeal an existing regulation;

(8) the proposed rule will not change the number of individuals subject to the rule’s applicability; and

(9) the proposed rule will not affect this state’s economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

David Gordon, Executive Counsel, Executive Director Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Gordon has determined that for each year of the first five years the proposed rule is in effect the public benefit anticipated as a result of implementing the section will be increased construction of dispatchable electric generating facilities in the state. There will not be any significant, probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5) because the rule is designed to deliver grant money to qualifying electric generating facilities.

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by December 22, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website or by submitting a paper copy to Central Records, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Comments must be filed by January 5, 2024. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 55812.

In addition to comments on the text of the proposed rule, the commission invites interested persons to address the following questions related to eligibility requirements of the proposed rule:

1. Should the rule require registration as a power generation company with the commission as a condition for eligibility to receive a completion bonus grant award? Why or why not?
2. Should the rule require registration as a Generation Resource with ERCOT as a condition for eligibility to receive a completion bonus grant award? Why or why not?

3. How should the commission evaluate PURA §34.0106(b)'s prohibition against providing a completion bonus grant award to an electric generating facility that will be used primarily to serve an industrial load or private use network?
 - a. Should the commission prescribe a percentage of total energy output that an electric generating facility must achieve to be eligible for a completion bonus grant award?
If so, what percentage should the commission prescribe?
 - b. Should the commission employ another method to ensure that an electric generating facility primarily serves the ERCOT grid? If so, what method is appropriate and why?

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments. Comments should be limited to 12 pages, excluding the executive summary, and any attached redlines.

Statutory Authority

The rule is proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §34.0105(i), which requires the commission to adopt a system for

determining the amount by which the commission will discount an annual grant payment based on facility performance; and §34.0110, which authorizes the commission to establish procedures for the application and award of a grant or loan under PURA chapter 34, subchapter A.

Cross Reference to Statute: Public Utility Regulatory Act §§ 14.001, 14.002, 34.0105(i), and 34.0110.

§25.511. Texas Energy Fund Completion Bonus Grant Program.

- (a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §34.0105 and establish:
- (1) procedures for submitting an application to be eligible for a completion bonus grant award;
 - (2) terms for an applicant to request an annual grant payment; and
 - (3) performance standards for electric generating facilities for which an applicant seeks a completion bonus grant payment.
- (b) **Definitions.** The following words and terms, when used in this section, have the following meanings unless the context indicates otherwise.
- (1) **Commercial operations date** -- means the date on which the electric generating facility completes ERCOT's commissioning process and is approved for participation in the ERCOT market, as identified by ERCOT in the applicable monthly generator interconnection status report.
 - (2) **Performance year** -- means the one-year period that ends on an electric generating facility's most recent anniversary of its commercial operations date.
- (c) **Eligibility.** To be eligible for a completion bonus grant award under this section, an applicant's electric generating facility must:
- (1) Have a capacity of at least 100 megawatts (MW) attributable to:
 - (A) The construction of new dispatchable electric generating facilities providing power for the ERCOT region; or

- (B) The addition of new dispatchable electric generating facilities at an existing location providing power for the ERCOT region;
 - (2) Be a dispatchable electric generating facility with an output that can be controlled primarily by forces under human control that is not an electric energy storage facility;
 - (3) Interconnect and provide electricity to the ERCOT region;
 - (4) Participate in the ERCOT wholesale market;
 - (5) Meet the planning model requirements necessary to be included in an ERCOT capacity, demand, and reserves report for the ERCOT region after June 1, 2023;
 - (6) Operate in such a manner that the electric generating facility serves a greater output of electricity to the ERCOT bulk power system than it serves to an industrial load or private use network; and
 - (7) Meet the interconnection deadlines described in subsection (e)(1) of this section.
- (d) **Determination of eligibility for completion bonus grant award.**
- (1) **Eligibility application.** No later than 180 days after the commercial operations date of the electric generating facility for which an applicant requests a completion bonus grant award, an applicant must submit an electronic application in the form and manner prescribed by the commission. The application must include:
 - (A) The applicant's corporate name and the name of the electric generating facility for which it seeks a completion bonus grant award;
 - (B) Information describing the applicant's quality of services and management;
 - (C) Information describing the applicant's efficiency of operations;

- (D) A record of the applicant's history of electric generation operations in this state, including information demonstrating the applicant's prior experience with operating and maintaining dispatchable electric generating facilities;
- (E) A description of the operational attributes of the electric generating facility, including the manner in which it will serve an associated private use network or industrial load, if any, along with a description of how the electric generating facility primarily serves and benefits the ERCOT bulk power system given its relationship to a private use network or industrial load, and whether full generation output would be available to the ERCOT bulk power system during any Energy Emergency Alert;
- (F) A description of the electric generating facility's ability to address regional and reliability needs;
- (G) For electric generating facilities not yet interconnected to the ERCOT region:
 - (i) A proposed project schedule with anticipated dates for completion of construction, submission of registration documents with ERCOT and the commission, and anticipated commercial operations date;
 - (ii) The anticipated capacity of the electric generating facility when commercial operations begin; and
 - (iii) The estimated construction costs of the electric generating facility.
- (H) For electric generating facilities already interconnected to the ERCOT region:
 - (i) The actual new construction costs of the electric generating facility;

- (ii) The commercial operations date of the newly constructed electric generating facility;
 - (iii) The total increase in capacity of the electric generating facility; and
 - (iv) The name of the electric generating facility on ERCOT's market participant list.
 - (I) A statement describing when the electric generating facility met the planning model requirements necessary to be included in an ERCOT capacity, demand, and reserves report with an identification of the first instance of the electric generating facility's inclusion in an ERCOT capacity, demand, and reserves report;
 - (J) A statement of whether the applicant applied for a loan under 16 TAC §25.510 as well as the commission's determination on the loan application; and
 - (K) If applicable, a statement asserting that extenuating circumstances support the extension of any deadline described in subsection (e)(1) of this section, including the facts surrounding those extenuating circumstances.
- (2) The commission will evaluate the information provided in an application to determine whether an applicant is deemed eligible to receive a completion bonus grant award. Determination of eligibility to receive a completion bonus grant award does not entitle an applicant to a grant payment.
- (A) For applicants deemed eligible to receive a completion bonus grant award, the commission will file a notice of eligibility applicable to the electric generating facility. The notice of eligibility will state the completion bonus

grant award amount based on the capacity of the electric generating facility and its interconnection date.

(B) A notice of eligibility will authorize an applicant to request and obtain data from ERCOT showing the electric generating facility's equivalent availability factor (EAF) performance during the 100 hours with the least quantity of operating reserves during a performance year. A notice of eligibility will automatically expire 45 days after the tenth anniversary of the electric generating facility's commercial operations date.

(3) Information submitted to the commission in a completion bonus grant application is confidential and not subject to disclosure under Chapter 552 of the Texas Government Code.

(4) Applicants must separately file a statement indicating that an application for a completion bonus grant award has been presented to the commission for review with the date of application submission.

(e) Completion bonus grant award amount.

(1) The amount of a completion bonus grant award is based on the capacity and interconnection date of the electric generating facility for which an applicant requests a completion bonus grant award. Unless the commission determines that extenuating circumstances justify extension of the deadlines under this subsection, the commission may approve a completion bonus grant award for an applicant deemed eligible to receive a completion bonus grant award in an amount not to exceed:

- (A) \$120,000 per MW of capacity for an electric generating facility that is interconnected to the ERCOT region before June 1, 2026; or
- (B) \$80,000 per MW of capacity for an electric generating facility that is interconnected to the ERCOT region before June 1, 2029.

(f) **Grant payment request.**

- (1) For each performance year, the commission will disburse a grant payment to an applicant eligible to receive a completion bonus grant award. A grant payment is one-tenth of an applicant's total completion bonus grant award, subject to the performance standards and discount methodology prescribed under subsections (g) and (h) of this section.
- (2) No later than 45 days after each anniversary of the electric generating facility's commercial operations date, an applicant may submit a request for grant payment in the form and manner prescribed by the commission. The request for grant payment must include the following information:
 - (A) A statement that the applicant is eligible to receive a completion bonus grant award with reference to the commission's notice of eligibility for a completion bonus grant award for the electric generating facility;
 - (B) The electric generating facility's commercial operations date and the performance year for which the applicant requests a grant payment;
 - (C) The amount of the grant payment requested based on the applicant's notice of eligibility and the electric generating facility's EAF performance rating during the performance year;

- (D) The electric generating facility's EAF performance record during the performance year with accompanying data from ERCOT to support the electric generating facility's EAF; and
 - (E) If an electric generating facility also serves a private use network or industrial load, an accounting showing that the majority of the output of the electric generating facility served the ERCOT bulk power system during the performance year.
- (4) The commission will evaluate a request for grant payment to determine whether an electric generating facility meets the performance standards to receive a grant payment for the performance year requested, including whether to discount or withhold a grant payment. Upon determining that an electric generating facility is approved to receive a grant payment in the amount requested, the commission will instruct the Texas Treasury Safekeeping Trust Company to disburse the grant payment to the applicant.
- (g) **Performance standards.** An electric generating facility's performance is based on EAF during the performance year for which an applicant requests a grant payment. EAF is the fraction of a given operating period in which a generating unit is available to produce electricity without any outages or equipment deratings during the 100 hours with the least quantity of operating reserves during a performance year. A grant payment may be discounted based on the formula prescribed subsection (h) of this section. The performance standards for any performance year are as follows:

- (1) Optimal performance is an EAF of 95 during the 100 hours with the least quantity of operating reserves for the performance year.
 - (2) Median performance is an EAF of 50 during the 100 hours with the least quantity of operating reserves for the performance year.
- (h) **Grant payment discount formula.** A grant payment equals one tenth of an applicant's completion bonus grant award as stated in the applicant's notice of eligibility, subject to discount or withholding. The formula for any discount of an annual grant payment is as follows:

$$Dollars(per\ MW) = \begin{cases} 0, & \text{if } EAF_{actual} \leq EAF_{50} \\ (0.25\delta_n + 0.015(EAF_{actual} - EAF_{50})\delta_n), & \text{if } EAF_{50} < EAF_{actual} < EAF_{95} \\ \delta_n, & \text{if } EAF_{actual} \geq EAF_{95} \end{cases}$$

Where δ_n is the grant payment amount based on the applicant's notice of eligibility.

(1) **Discount or withholding of payment.**

- (A) The commission will not apply any discount to a grant payment if the facility meets or exceeds the optimal performance standard established under subsection (g)(1) of this section.
- (B) The commission will disburse a discounted grant payment if the performance of the electric generating facility for which the grant was provided is above the median performance standard established under subsection (g)(2) of this section but less than an optimal performance standard established under subsection (g)(1) of this section.
- (C) The commission will withhold a grant payment if the EAF performance of the facility is equal to or below the median performance standard established under subsection (g)(2) of this section.

- (2) **Example.** An applicant would receive the following grant payments for hypothetical performance years 1, 2, and 3 based on a \$12,000,000 completion bonus grant award described in a notice of eligibility for a 100 MW electric generating facility interconnected on March 1, 2026.

Performance Year 1 -- The electric generating facility achieves an EAF of 96. The applicant receives a full grant payment of \$1,200,000.

Performance Year 2 -- The electric generating facility achieves an EAF of 85. The formula results in the following grant payment discount:

$$0.25(\$12,000) + 0.015(85 - 50)(\$12,000) = \$9,300 \times 100 \text{ MW}$$

The applicant will receive a discounted grant payment of \$930,000.

Performance Year 3 -- The electric generating facility achieves an EAF of 48. The applicant receives no grant payment.

- (i) **No Contested Case or Appeal.** Neither an application for a completion bonus grant award nor a request for grant payment is a contested case. Commission decisions on completion bonus grant award eligibility or whether to disburse a grant payment are not subject to motions for rehearing or appeal.
- (j) **Expiration.** This section expires December 1, 2040.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 30TH DAY OF NOVEMBER 2023 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA GONZALES**